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## Why deregulation does not happen

**Mark Boleat**

The government has embarked on an ambitious deregulation initiative. It is not the first government to do so, nor will it be the last. And it will largely fail, as have previous attempts. The politics and dynamics of regulation and deregulation are complex. It is not a matter of turning the tap on and off. Increasing regulation is like falling off a log; deregulation is more akin to climbing a mountain.

There is no expectation in the business community that the present initiative will be successful. The NAO report *Reducing the Cost of Complying with Regulations: The Delivery of the Administrative Burdens Reduction Programme* (2007) provides some useful information on this. 75% of businesses thought the burden of regulation would increase in the next year. 85% of businesses were not confident that the government could succeed in reducing the regulatory burden.

This paper explores why deregulation does not happen, and suggest how the issue needs to be approached.

### **Government plans**

In *Next Steps on Regulatory Reform* (July 2007) the government announced ambitious plans to cut the regulatory burden. It said that “The UK is taking forward one of the most ambitious and wide-ranging regulatory reform agendas in the world”. The agenda includes –

- Measurement of the administrative burden of regulation.
- Simplification plans for each department and agency.
- A commitment to deliver a 25% reduction in administrative costs at both UK and EU level.
- Eighteen government departments and agencies have committed to reducing administrative burdens on business by at least 25% by May 2010.
- Introducing a Regulators’ Compliance Code.
- Provision for a statutory duty on regulators to act in a proportionate, accountable, consistent, transparent and targeted manner.

### **Previous plans**

There have several previous deregulation initiatives. These have been documented in the BCC Report by Tim Amber and Francis Chittenden *Deregulation or Déjà Vu?*(2007). They conclude: “Behaviour does not seem to be much influenced by party. Both approach *deregulation* (removing existing laws) with enthusiasm, learn little or nothing from previous efforts, and have little if anything to show from each initiative”.

### **How much does regulation cost?**

Businesses frequently complain that the burden of regulation is one of the greatest problems that they face. Regulators are fond of pointing out that when asked for specific examples few are forthcoming. Open invitations to given examples of burdensome regulation, such as the current Better Regulation Portal, get a minimal response. One

reason for this is valid scepticism that representations will not be successful and that therefore business is wasting its time in making a case.

There is scope for an endless debate about the costs of regulation and the corresponding burden borne by business. There are different types of costs that need to be clearly distinguished –

- Policy costs. For example minimum wage legislation is designed to increase the cost of employing lower paid workers.
- Licence fees.
- Cost of form filling and record keeping to meet regulatory requirements.
- Cost of keeping abreast of regulatory requirements and taking advice on how to meet them.
- One off costs of implementing a new regulation or changes to an existing regulation, such as reprogramming software and reprinting literature.

And in measuring the regulatory burden it is necessary to deduct costs that would have to met in any event. For example, all businesses have to meet the costs of administering a payroll and ensuring that the health and safety of workers is protected. But there will be some additional costs in these areas that businesses have to meet solely as a result of regulations.

The government has made a brave attempt to measure the “administrative burden”, broadly speaking the third bullet point. The official definition of administrative costs is “the [recurring] costs of administrative activities that businesses are required to conduct in order to comply with the information obligations that are imposed through central government regulation”. Total administrative costs were calculated at £31 billion. After ‘business as usual’ costs had been taken out, the administrative burden was estimated as just under £20 billion as at May 2005. However, the National Audit Office report pointed out that the approach used does not measure the costs to business of complying with the policy objectives of regulation; for example, having to make adjustments to premises to ensure disabled people can access them. Neither does it measure ‘one-off costs’ nor the ‘financial costs’ of complying with regulation, such as paying tax or licence fees.

In respect of the 25% target the NAO commented: “Reductions are calculated at an aggregate level and, therefore, the total £4 billion reduction would mean only a small average saving per business per year considering that there are over two million registered companies in the UK, excluding the self-employed, partnerships, charities and third sector organisations”. It went on: “There is, therefore, no guarantee that a 25 per cent reduction in administrative burdens will lead to a noticeable change in the resources that businesses devote to complying with regulation. Administrative burdens are likely to be a relatively small element of total cost to business of complying with regulation.”

The NAO survey showed that the administrative tasks covered in the measurement exercises were not always cited by businesses as the most burdensome aspects of complying with regulation. Businesses rated the following activities as particularly burdensome: keeping up-to-date with changes in existing regulations; the time it takes to go through the whole process of complying; the lack of information about which regulations apply; and finding information and guidance.

Is the government shooting the wrong fox? The NAO survey of businesses revealed that 67% said government did not understand business well enough to regulate and 68% disagreed with statement that government consulted well before introducing new regulation. Perhaps more effort should be put into understanding business and consulting with business rather than regulating business.

### **The benefits of deregulation are overstated**

A key point that is frequently missed in the debate on deregulation is that many of the costs incurred in meeting new regulatory requirements are sunk costs; they are not going to be recovered if the regulations are removed. For example, if a business (perhaps wrongly) thinks that regulations require it to install a disabled toilet and to provide wheelchair access to a building where this is very difficult, then it will incur substantial costs in doing so. If the regulatory requirement is removed there is no cost saving. Similarly, if a financial regulator imposes new information requirements then substantial programming costs may be incurred in meeting these requirements. If the information requirements are removed there is no cost saving to the business. Some regulations do have ongoing costs but generally these are small compared with the initial costs of complying with the regulation. All this suggests that business would benefit more from a reduction in the burden of new regulations rather than seeking to remove existing ones. It also suggests that the current initiative, based on reducing recurring administrative costs, may well be raising false expectations as these are not the major issue.

### **Business often opposes deregulation**

While business moans about the burden of regulation, at the same time it frequently opposes any attempt to deregulate. There are good and bad reasons for this. The good reason has been covered in the previous section. Deregulation will not result in a substantial cost saving therefore there is little benefit to business. In most markets regulatory costs are passed on to the consumer and therefore are not ultimately paid for by business; they are simply a form of tax and are regarded as such.

The bad reason connected to this is that regulatory requirements are a barrier to entry. If a business has to meet substantial regulatory costs to get into a market this will be a deterrent to entry. Those who have paid the costs can legitimately argue that is unfair if new entrants have a competitive advantage by not having to meet those costs, but protection is often an equal consideration.

Within businesses there are many people whose jobs depend on regulation – company secretaries (who may well be the most enthusiastic about the new Companies Act), health and safety staff, compliance officers in financial institutions and legal departments generally. New regulations may mean that they work harder; they also mean they require more resources, their jobs become more important and that therefore they should be paid more.

Trade associations, which represent businesses, may well be part of the anti-regulation group. Trade associations are strongest in sectors subject to regulation. Indeed, imposing regulation on a new sector generates a demand for trade association services. New regulations on the house purchase market, employment businesses and claims management companies have all proved to be the stimulus for new trade associations. If the regulations were removed the demand for trade association services would fall and the chief executive and his or staff may need to look for new employment.

In the larger trade associations committees often comprise experts on regulation. Their instinctive reaction is to ask for “clarity” and “certainty”, ie more detailed regulation. They do not like requirements to “take reasonable steps”; they want those steps to be spelt out so that they can build compliance around them. And of course, the more their particular area is subject to regulation the more important they become.

### **Government will chicken out**

It is easy to identify areas where deregulation would be desirable; this is duly done in the appendix. However, each deregulation move has to be approved by a minister and he or she will judge the potential benefit to business (a small cost saving) against the benefit and risk to themselves (minimal upside, criticism from business for removing “essential protection of the public” and huge criticism if the deregulation can be held to cause damage to anyone).

This can be illustrated by an example. Where labour providers transport their workers to their place of work in a vehicle with more than nine seats, a recent legal interpretation means that even if they do not charge their workers, they are deemed to be running a public service vehicle which must be licensed accordingly, and drivers must also have the appropriate qualification. Some large labour providers run a fleet of vehicles and probably would resist deregulation as the arrangements are an effective barrier to entry. However, smaller labour providers have in some cases reacted to the new interpretation by ceasing to provide transport. There may have a tacit arrangement with some of their workers (even extending to providing the money to buy an old banger) that they will give lifts to their fellow workers, who will be expected to make a financial contribution to running costs. The effect is that instead of workers being driven to their place of work in a minibus for which the employer has some responsibility, they are driven by fellow workers, often new to the country, driving vehicles which may well be in poor condition, and possibly uninsured.

The submission from the official to the minister will probably run along the following lines

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“The argument of labour providers that they should not require PSV licences is a perfectly valid one. If a business carries its own workers in a minibus then it does not require a PSV licence; it was a quirky legal decision that deemed employment businesses doing precisely the same thing to require a PSV licence. We know the effect of the ruling has been that many workers are now transported to their place of work in dangerous and uninsured private cars. Indeed, there have already been deaths and injuries to workers in this situation.

However, I would caution you against deregulation here. The bigger employment businesses, which on the whole are the better ones, have no difficulty in complying with current regulations. You are not going to be blamed however many workers die if they are being driven in private cars as a direct result of the regulation. However, if just one person is injured as a result of this deregulation measure, you minister (not me) will be personally blamed. Best to let sleeping dogs lie here.”

It is a no-brainer. Deregulation will not happen because the substantial benefit to workers and business is outweighed by the perceived downside risk to the minister.

### **Reducing a regulatory burden implies that an incorrect decision was made to impose it**

In all walks of life people make bad decisions and refuse to change them because it is embarrassing. So it is with government. Even if there is a valid argument along the lines of “the regulation was appropriate when it was introduced, but circumstances have changed and it now serves little useful purpose” the removal of a regulatory burden will often lead to accusations of “u turns” or “government admits that it over-reacted”.

This reinforces the “government will chicken out” point.

### **Culture in government and regulators**

Turkeys do not vote for Christmas. Officials do not vote for deregulation. The *raison d’être* for many civil servants and ministers (but with honourable exceptions) is to legislate and to regulate. Getting a bill through Parliament is seen as a positive achievement, even if the consequences are harmful. Legislation is seen as the solution to a problem, often simplistically so as if legislation is a magic wand. The media encourage this attitude. When another teenager in London is the victim of gun crime or knife crime, ministers earnestly say that they are planning to “tighten regulations”, and the media swallow this hook, line and sinker, satisfied that the necessary action is being taken. Why existing regulations are not enforced is seldom a matter for discussion.

This tendency was well illustrated by the Gangmasters Licensing Bill, a private member’s bill. Introducing the Bill in the House of Commons, the sponsor, Jim Sheridan MP said –

“Rogue gangmasters are exploiting workers, undercutting legitimate labour providers, defrauding the taxpayer and engaging in a range of criminal activities. They are bad for workers, bad for business, bad for taxpayers and, more importantly, bad for our society, yet there is no law to regulate them.”

Mr Sheridan also indicated that up to £100 million a year of unpaid tax from rogue operators was being lost to the Treasury. He went on: “A licence and a register would protect those who rely on the services of gangmasters.”

Supporting Mr Sheridan, a Conservative MP, Mark Simmonds, said that there were “enormous health and safety issues, that enormous benefit fraud was going on, that there was enormous VAT fraud, that there were enormous social problems, that transport was dangerous with untaxed vehicles being used, there was intimidation and extensive people trafficking.”

The government minister, Alun Michael, welcomed the Bill and said that the government would work with Mr Sheridan to secure its enactment. He said -

“At the extreme, there are gangmasters who trade in human misery, disregard the law, and resort to intimidation and violence in pursuit of their personal power over people and their profits. The government is committed to tackling the exploitive activities of gangmasters who have no respect for the law or for people. Efforts to end the human misery caused by certain labour providers has been going on for some time, and the Bill gives us an opportunity to strengthen the process ..... Legitimate gangmasters pay taxes, but the lawbreakers are responsible for considerable Exchequer fraud, health and safety offences, failure to pay the minimum wage and the use – rather the abuse – of illegal labour.

Other forms of non-compliance are often associated with the exploitation of gang workers.”

The inference from these speeches was that worker exploitation, tax evasion, using untaxed vehicles, intimidation, people trafficking, use of illegal labour, health and safety offences and not paying the minimum wage are all permitted activities and that licensing would prevent them. Of course all are already illegal; the issue is enforcement of existing legislation not lack of legislation. The Gangmasters (Licensing) Act duly became law and even in official circles is banded with the Dangerous Dogs Act as one of the least satisfactory examples of policy making.

The Parliamentary process does not help. Sometimes there is effective scrutiny of legislation. More often the desire to get the legislation through Parliament outweighs the need to ensure that the legislation is right. A Minister who fails to get his Bill through the Commons is a failure; introducing a poorly designed Act that achieves little if any useful purpose is unlikely to reflect badly on the Minister, who will have look since moved to new pastures by the time the deficiencies become apparent.

It is built into the DNA of many officials that the answer to a problem lies in legislation, regulations, orders or guidance which can be structured to give the impression of having legal effect. Indeed, that is what they are good at, although at the higher level there are many outstanding officials who understand that more regulation is not the answer.

Regulators naturally favour regulation, although interestingly it is the chief executives of many regulatory bodies who are trying to push back against pressure from ministers, civil servants, the media and their own staff. The further down one goes in a regulatory body the more the belief that everything must be regulated and be seen to be regulated, which leads to a concentration on regulating process rather than substance.

Like ministers, regulators are blamed for a perceived “failure” of regulation but not for the consequences of over-regulation. They run the inherent risk of being like over-protective parents, so shielding their charges from “danger” that they become dysfunctional.

### **Deregulation initiatives can easily be countered**

Officials are highly skilled at circumventing deregulation initiatives; they have had years of practice. And the initiatives are easy to circumvent, because they are poorly designed.

My first encounter with the circumvention tactic came many years ago when I received from the Department of the Environment (to prove just how long ago) a “letter”. However, the contents of it were such that it should have been a “circular”, which everyone knew the meaning of and which was properly indexed and cross referenced. On enquiring why it was a letter the answer was that the unit had extinguished its number of permitted “circulars” for the year. No doubt the Minister could claim that he had been highly successful in reducing the number of “circulars”.

The Better Regulation Task Force report *Regulation – Less is More* (2005) recommended a “one in one out” rule for new regulations. This is the easiest to get round, and indeed if anything actually encourages more regulation. There are any number of regulations that have long since fallen into disuse and which impose no burden on business. Now, it is easier to replace them with regulations that really do

impose a burden. Introducing the “regulation of sales of DVDs order” and abolishing the “regulation of sales of betamax video cassettes” is not regulation neutral.

Officials in various government departments and agencies are now devising means of avoiding another better regulation initiative, that is consolidating all government websites into three. They are right to do as the proposal will be disruptive and will lead to problems in updating websites.

More generally the prevarication and spin it out tactic are easily used. The need for legal advice may have to be sought, the importance of consultation will be emphasised, and the burden of other work card will be played to the maximum extent. Finally of course is the “my minister is very concerned about this” combined with the threat of dire consequences if deregulation actually occurs.

If deregulation actually occurs then it can be counteracted by issuing “guidance” which quickly assumes the status of regulation or by stepping up monitoring and compliance arrangements.

### **Regulating the regulators is not the answer**

Part of the government’s agenda is to change the behaviour of regulators. This is essential. However, the approach of the government is questionable. It is introducing a “Compliance Code”. For the most part this is “motherhood and apple pie” stuff. For example, the draft code requires that regulators “should only adopt a particular approach or tool if the benefits justify the costs and it entails the minimum burden compatible with achieving desired regulatory objectives.” While one would not wish to quarrel with this it is worrying that it needs to be stated at all; surely this is precisely what regulators should have been doing all the time?

What is more worrying is the Minister’s sign-off to the Impact Assessment: “The intention is to create culture change throughout organisations by introducing specific legal requirements to have regard to the Compliance Code and the five principles of good regulation”. Legislation can certainly help to create culture change, but in respect of regulation will never be nearly sufficient. It is doubtful if imposing this legal duty will have any significant practical effect. More generally, the government is seeking to impose obligations on regulators that fail to recognise the very different contexts in which they are operating.

It is a little paradoxical that the government’s method of dealing with the regulatory burden is partly to regulate it. This is an area where the government should follow its own advice, and seek a non-legislative solution.

### **So, how can deregulation be made to happen?**

This analysis leads to the inevitable conclusion that the government’s approach to deregulation, and also to regulation, is flawed. It does not understand the politics and dynamics of the issue. Deregulation is not in the nature of the people who are being asked to deregulate. It will not happen unless the rewards and incentives are altered massively such that there is a culture change within government. And like any other culture change there is a need to change some of the people as well as change the culture of the incumbents.

But first some leadership is needed. When the official says to the minister “it would be a brave decision to deregulate.....” he means “don’t do it and if you do, it will be against my advice”. Ministers, officials and regulators must be brave and lead, resist the facile notion that the answer to every problem is more regulation and communicate effectively why they are seeking to reduce regulatory burdens.

In appointing regulators and boards of regulators government should be looking not for enthusiasts of regulation but rather at those with a track record of deregulating and who question the need for every new regulation that is proposed. The Civil Service would benefit from the appointment of outsiders on temporary contracts to be fully involved in major issues. If they have come from business they will start from the premise that you have to work within the existing rules to deal with a problem, not that you seek new rules.

Given that ministers, officials and regulators will instinctively regulate, one way to reduce the burden of regulation is to reduce the number of ministers, officials and regulators. This would not be a perfect solution, as the result could be more badly thought through regulation rather than less regulation, but it is worth considering in a number of government departments and agencies. It would then be essential for them to concentrate on the key issues rather than “nice to haves”.

Existing regulations and most importantly new regulations should be subject to independent review. And such reviews must always look at the full effects, particularly in driving activity outside the regulatory fold. These should not be £100,000 PWC reviews but rather modest reviews by independent experts.

And government must vigorously expose the hypocrisy of businesses and their trade bodies which simultaneously complain about the burden of regulation while failing to put forward any significant proposals for deregulation and opposing those that come from others. A useful starting point for the present exercise would have been to ask every sectoral trade association to list and cost the deregulation measures that it wants.

### **Prognosis**

There is nothing in the current deregulation initiative to suggest that it will work. The treatment is of symptoms not causes, and the inexorable tide of regulation will roll on. With a bit of creative accounting and some spinning the impression may be otherwise, but the goal of deregulation will remain elusive.

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Mark Boleat is a company director and consultant specialising in regulation. He has been Director General of the Building Societies Association, the Council of Mortgage Lenders and the Association of British Insurers. He is currently Chairman of the Association of Labour Providers, a Councillor in the City of London and a member of the Gibraltar Financial Services Commission. For a year from August 2006 he was a Regulator; he had responsibility for implementing the regulatory regime for claims management companies under the Compensation Act 2006.

Tel: 07770 441377  
E-mail: [mark.boleat@btinternet.com](mailto:mark.boleat@btinternet.com)  
Website: [www.boleat.com](http://www.boleat.com)



## Appendix

### Some obvious deregulation candidates

This appendix gives examples of a number of regulations which impose administrative or other burdens that cannot easily or in some case be justified at all.

#### **Safety warning on aircraft**

At the beginning of every flight passengers are forced to listen to a safety announcement (and recently have been warned not to read newspapers while the announcement is being made). The announcement includes advice of how to use a life jacket. There is no example of a life jacket on a commercial aircraft contributing to saving life and it is difficult to see how this could ever be the case. But the announcements continue and life jackets continue to be carried on every plane. An *Economist* leader on 7 September 2006 said everything that could be said on this subject -

“GOOD morning, ladies and gentlemen. We are delighted to welcome you aboard Veritas Airways, the airline that tells it like it is. Please ensure that your seat belt is fastened, your seat back is upright and your tray-table is stowed. At Veritas Airways, your safety is our first priority. Actually, that is not quite true: if it were, our seats would be rear-facing, like those in military aircraft, since they are safer in the event of an emergency landing. But then hardly anybody would buy our tickets and we would go bust.

The flight attendants are now pointing out the emergency exits. This is the part of the announcement that you might want to pay attention to. So stop your sudoku for a minute and listen: knowing in advance where the exits are makes a dramatic difference to your chances of survival if we have to evacuate the aircraft. Also, please keep your seat belt fastened when seated, even if the seat-belt light is not illuminated. This is to protect you from the risk of clear-air turbulence, a rare but extremely nasty form of disturbance that can cause severe injury. Imagine the heavy food trolleys jumping into the air and bashing into the overhead lockers, and you will have some idea of how nasty it can be. We don't want to scare you. Still, keep that seat belt fastened all the same.

Your life-jacket can be found under your seat, but please do not remove it now. In fact, do not bother to look for it at all. In the event of a landing on water, an unprecedented miracle will have occurred, because in the history of aviation the number of wide-bodied aircraft that have made successful landings on water is zero. This aircraft is equipped with inflatable slides that detach to form life rafts, not that it makes any difference. Please remove high-heeled shoes before using the slides. We might as well add that space helmets and anti-gravity belts should also be removed, since even to mention the use of the slides as rafts is to enter the realm of science fiction.

Please switch off all mobile phones, since they can interfere with the aircraft's navigation systems. At least, that's what you've always been told. The real reason to switch them off is because they interfere with mobile networks on the ground, but somehow that doesn't sound quite so good. On most flights a few

mobile phones are left on by mistake, so if they were really dangerous we would not allow them on board at all, if you think about it. We will have to come clean about this next year, when we introduce in-flight calling across the Veritas fleet. At that point the prospect of taking a cut of the sky-high calling charges will miraculously cause our safety concerns about mobile phones to evaporate.

On channel 11 of our in-flight entertainment system you will find a video consisting of abstract imagery and a new-age soundtrack, with a voice-over explaining some exercises you can do to reduce the risk of deep-vein thrombosis. We are aware that this video is tedious, but it is not meant to be fun. It is meant to limit our liability in the event of lawsuits.

Once we have reached cruising altitude you will be offered a light meal and a choice of beverages—a word that sounds so much better than just saying ‘drinks’, don't you think? The purpose of these refreshments is partly to keep you in your seats where you cannot do yourselves or anyone else any harm. Please consume alcohol in moderate quantities so that you become mildly sedated but not rowdy. That said, we can always turn the cabin air-quality down a notch or two to help ensure that you are sufficiently drowsy.

After take-off, the most dangerous part of the flight, the captain will say a few words that will either be so quiet that you will not be able to hear them, or so loud that they could wake the dead. So please sit back, relax and enjoy the flight. We appreciate that you have a choice of airlines and we thank you for choosing Veritas, a member of an incomprehensible alliance of obscure foreign outfits, most of which you have never heard of. Cabin crew, please make sure we have remembered to close the doors. Sorry, I mean: ‘Doors to automatic and cross-check’. Thank you for flying Veritas.”

The requirements for commercial aircraft to carry life jackets and to make safety announcements serve little useful purpose. They are unlikely to be abolished. They are part of international agreements so the UK cannot take unilateral action. It would also be a very brave minister who would lay himself open to the press headlines of “minister lets air travellers drown.”

### **Aircraft passenger searches**

Terrorism is a serious threat and the security services are doing a good job where it matters – stopping terrorists getting near aircraft with devices that could cause loss of life. But the searches of passengers are to a large extent both unnecessary and ineffective. They are also backward looking. After the “shoe bomber” came the requirement to remove shoes when going through security. After the threat of liquid bombs being made on planes came the ban on liquids with security staff zealously stripping customers of toothpaste, lipstick and bottles of water. If the concern is that weapons can be taken onto aircraft then the present arrangements do not prevent this. Glass bottles can be bought in airside shops and broken to make an effective weapon. Sharp instruments that are removed at security can be bought in some shops or removed from a restaurant. And why are the requirements that apply to aircraft not applied equally to trains and cross channel ferries? The answer is that they cannot be, because it is impractical. In other words the security restrictions in airports exist partly

because they are possible to implement albeit with some disruption, not because they are effective, particularly as similar restrictions do not apply to flights coming into the UK.

Once imposed security requirements are difficult to lift – which means that they should be imposed only after a thorough risk assessment and not in a panic measure in response to the latest incident. The present restrictions are disproportionate, causing undue disruption for little benefit. They should be considerably relaxed.

### **Requiring consent for children under school leaving age to be employed**

The Children and Young Persons Act 1933 requires local authorities to enforce the regulation of child employment. Whilst there is no requirement for a permit scheme in the 1933 Act, this is how the regulations have been implemented since their inception. The byelaws generally state that for each child that they employ, employers are required to send to the local authority:

- name, address and date of birth of child;
- hours, days, occupation and tasks;
- signature giving parental approval;
- details of school that the child attends; and
- a statement that a risk assessment has been carried out.

A permit will then be issued by the local authority. Without a permit, children are working illegally. The Better Regulation Task Force report *The Regulation of Child Employment* (2004) went on to observe that “most working children are unlikely to hold a permit. One survey found that, of current and former child employees, the percentage who had ever had a work permit was 4% in Blackburn, 6% in Cumbria and 7% in North Tyneside.”

The report recommended that “by February 2005, the Department for Education and Skills should consult on moving to a system of regulation in which employers register with their local authority as an employer of school-age children, rather than applying for a permit for each child employee.” This recommendation has not been acted on and the requirements remain, but are largely ignored.

The recommendation should be implemented. Presumably it has not been because the reaction might be “ministers encourage child labour”.

### **No smoking signs**

In August 2007 it became an offence to smoke in buildings in England. This was accompanied by massive publicity; everyone was aware of the new law and it has been rapidly accepted. But the Government introduced a bureaucratic measure requiring “no smoking” signs to be liberally displayed. The Smoke-free (Signs) Regulations 2007 require that –

“at each entrance to smoke-free premises there shall be displayed in a prominent position at least one no-smoking sign which—

(a) is at least A5 size;

(b) displays the no-smoking symbol; and

(c) contains, in characters that can be easily read by persons using the entrance, the words—

“No smoking. It is against the law to smoke in these premises”.

And

“Any person with management responsibilities for a smoke-free vehicle shall be under a duty corresponding to that in section 6(1) of the Act to ensure that at least one no-smoking sign is displayed in a prominent position in each compartment of his vehicle.”

These arrangements are overkill, particularly that relating to vehicles which may well be driven by only one person. The entrances to buildings are now littered with tacky signs, often out of keeping with the buildings and generally wholly unnecessary. It is no secret that smoking is banned in public places. So is urinating, sex, being drunk and disorderly, theft, violence and driving motorbikes, but no signs are needed. The requirements on signs should be repealed. They are unlikely to be as this might be taking to imply that imposing them was a mistake.

This issue usefully illustrates the divergence between the costs of regulation and the benefits of deregulation. On the whole implementation costs were small. Some businesses may have spent time checking what they to do, particularly if their premises were unusual. However, once signs have been stuck up then there is no financial benefit incurred in removing them; on the contrary a modest cost would be incurred. The beneficiaries of repealing the regulations would be the public would not be faced with unnecessary signs.

#### **Advertising planning requirements in local newspapers**

Local authorities are required to advertise details of planning applications in local newspapers. The relevant regulations are the General Development Procedure Order 1995 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990, and Planning (Listed Buildings and Conservation Areas) Regulations 1990. Circular 15/92: Publicity for Planning Applications also provides guidance.

The regulations result in numerous advertisements in local newspapers, using the smallest font size available. Their impact is minimal. Most authorities directly notify those most affected by planning applications, and websites are now the place to find details of applications. It was therefore sensible of the ODPM to commission a study on whether the regulations needed to be amended. The study *Review of the Publicity Requirements for Planning Applications* was duly published in 2004. Recommendation 1 in the report was -

“LPAs [local planning authorities] be encouraged to use their websites rather than newspapers for advertisements (where a facility exists for online advertisement of notices). Given that local newspaper advertisements are considered to be the least effective type of publicity and that powers exist to enable LPAs to publicise applications by way of a local newspaper advertisement and online advertisement, it is suggested that the Regulations be amended to enable newspaper advertisements or online advertisements.”

No action has been taken as a result. The recommendation should be implemented. Perhaps one reason why it has not been is that the media is itself a powerful lobby group. One can imagine the headlines: “Ministers deny the public information on planning applications”.

### **The Accession States Worker Registration Scheme (WRS)**

Under the WRS, workers from eight of the Accession States that joined the European Union in 2005 must register within one month of starting work, paying a £90 fee (originally £50) for so doing. Registration must be repeated for subsequent job changes although the fee is payable only once. The purpose of the scheme is to ostensibly monitor the impact on the labour market of workers arriving in Britain from the Accession States.

The scheme is costly to workers, requiring them to pay the equivalent of two days after-tax pay. This year Accession State workers will pay £18 million to register. It also discourages the mobility of workers. The scheme is costly to employers, requiring an estimated 30-45 minutes to help each worker register. The costs to employers this year will be about £3 million. The scheme is costly to the State by encouraging workers to remain illegally employed and therefore outside the tax and national insurance system.

Statistics from the scheme are of little use for policy purposes as they are implausible, take no account of those who leave the country after registering and exclude the self-employed and those working for an employer for less than a month. National insurance numbers give better data.

The scheme serves no useful purpose and should be abolished.

Perhaps the main reason why it remains is that abolishing it would be seen as “government removes controls of foreign workers”.

### **Verifying entitlement to work**

It is an offence for employers to employ workers who are not legally entitled to work in Britain. However, Home Office guidance provides a splendid example of gold plating, such that there is a general belief that it is a legal requirement to undertake certain document checks and to keep photocopies even if one is employing a family member.

Section 8 of the asylum and immigration Act states -

(1) Subject to subsection (2) below, if any person (“the employer”) employs a person subject to immigration control (“the employee”) who has attained the age of 16, the employer shall be guilty of an offence if—

(a) the employee has not been granted leave to enter or remain in the United Kingdom; or

(b) the employee’s leave is not valid and subsisting, or is subject to a condition precluding him from taking up the employment,

and (in either case) the employee does not satisfy such conditions as may be specified in an order made by the Secretary of State.

(2) Subject to subsection (3) below, in proceedings under this section, it shall be a defence to prove that—

(a) before the employment began, there was produced to the employer a document which appeared to him to relate to the employee and to be of a description specified in an order made by the Secretary of State; and

(b) either the document was retained by the employer, or a copy or other record of it was made by the employer in a manner specified in the order in relation to documents of that description.”

The gold plating comes in Home Office guidance. *Changes to the law on preventing illegal working: short guidance for United Kingdom employer* says -

“Section 8 of the Asylum and Immigration Act 1996 requires all employers in the United Kingdom to make basic document checks on every person they intend to employ. By making these checks, employers can be sure they will not break the law by employing illegal workers.”

This statement is wrong; there is no such requirement.

The guidance goes on -

“It is important that you read this guidance if you employ staff in the United Kingdom. It will help you understand what documents you must ask your potential employees to produce from 1 May 2004, so that you can establish whether they can work for you legally. It also explains what steps you must take under the law to satisfy yourself that any documents produced by your potential employee actually belong to that person.”

The guidance then specifies in detail how the document check must be done including checking photographs. checking any United Kingdom Government stamps or endorsements to see if the potential employee is able to do the type of work and finally making a photocopy “using **only** the Write Once Read WORM software package” of relevant documents.

In other words a fairly simple legal requirement not to employ illegal workers has been transformed with no legal authority into detailed requirements on checking and photocopying documents which most employers believe are actually legal requirements.

This guidance then gets repeated by other regulators. For example the Gangmasters Licensing Authority licence conditions state that “Employers will be required to show that they have complied fully with Section 8 of the Asylum and Immigration Act 1996”. They only way that they can “show” this is by making the document checks. The Authority’s guidance makes this explicit: It is essential that the gangmaster ensures that proper records are kept and checks made in line with Home Office Guidance.”

This is an area where there is no need for any change in legislation, merely a need to stop gold plating through guidance.

### **Public service vehicles**

Vehicles with more than eight passenger seats that are being used for “hire and reward” must have PSV licences and drivers must have PCV entitlement.

“Hire and reward” is defined in Section 1(5) of the Public Passenger Vehicle Act 1981 which provides that –

“(a) a vehicle is to be treated as carrying passengers for hire or reward if payment is made for, or for matters which include, the carrying of passengers, irrespective of the person to whom the payment is made and in the case of a transaction effected by or on behalf of a member of any association of persons (whether

- incorporated or not) on the one hand and the association or another member thereof on the other hand notwithstanding any rule of law as to such transactions;
- (b) a payment made for the carrying of a passenger shall be treated as a fare notwithstanding that it is made in consideration of other matters in addition to the journey and irrespective of the person by or to whom it is made;
  - (c) a payment shall be treated as made for the carrying of a passenger if made in consideration of a person's being given a right to be carried whether for one or more journeys and whether or not the right is exercised."

This provision has proved to be a major issue for labour providers who often transport their workers in their transport to their place of work. Generally where an employer transports his workers this is not considered to be "hire and reward". Certainly, reading Section 1(5) would not lead anyone to the conclusion that a labour provider (but no other employer) is always in the "hire and reward" business. However, the courts have so ruled on the grounds that the fee charged to labour users must take into account transport costs. It makes no difference whether the workers are charged for the transport or not or indeed whether there is any differences in the charges made to those customers to whom workers are transported and those to whom workers are not transported. The definitive case is *Regina v Angel Human Resources (Southampton Crown Court, 25 March 2003)*. The court acknowledged "that it may be difficult to determine whether the section applies in some, perhaps in very many, instances".

This is a good example of a judicial decision having a significant policy impact. When labour providers were advised of this interpretation they reacted in one of three ways.

- Comply with the law which means obtaining PSV licences for vehicles and ensuring the drivers have PCV entitlement (or EU equivalent). The former is relatively easy, but imposes additional costs. PCV entitlement requires an expensive training course and an additional exam; the process can take several months. Again, there is an additional cost involved. However, a driver with PCV entitlement may well decide that he can earn more money as a driver, and having got someone else to pay for him to obtain a qualification then promptly leaves.
- Work round the law by doing one or more –
  - Removing seats from minibuses so there are only eight passenger seats. A 12 seater minibus with one passenger (or even no passengers) is a PSV vehicle. What was a 12 seater minibus with four seats removed and carrying eight passengers is not a PSV vehicle.
  - Using people carriers or large private cars.
  - "Encouraging" some workers to buy cheap old cars and provide an unofficial service, with workers "paying" the driver.
- Ignore the law. In this case a labour provider would probably use vans rather than minibuses which means that they are less likely to be stopped by the police or VOSA. There are often no seats and the workers are at risk in a number of ways.

The general effect of the current interpretation of the law is to increase costs for some labour providers. There will also have been an increase in use of the informal economy, in particular encouraging some workers to run their own unofficial transport services. It is difficult to see how public policy objectives have been promoted.

The new interpretation of the law creates a number of anomalies. In answer to the question “is hire and reward taking place?” VOSA gave the following answers -

- Buses used by state schools – **no**.
- Buses used by fee paying schools – **yes**.
- Works buses carrying only its own workers and not charging – **no**.
- Labour providers carrying their own workers and not charging – **yes**.
- Buses on hire to councils – **no**.
- Buses on hire to NHS trusts/ health authorities – **yes**.
- A police force taking officers to police an event for which it is charging – **yes**.
- The Navy taking a band to play at a concert for which it is charging – **yes**.

The solution here is simply to amend the regulations so that they apply only to genuine “public service vehicles” not to vehicles transporting staff or school children.